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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10 051,992	01/17/2002	Denwood F. Ross III	VTN-0572	4178

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AUDLEY A. CIAMPORCERO JR.
JOHNSON & JOHNSON
ONE JOHNSON & JOHNSON PLAZA
NEW BRUNSWICK, NJ 08933-7003

EXAMINER

ISRAEL, ANDREW

ART UNIT	PAPER NUMBER
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2878

DATE MAILED: 04/11/2002

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.
10/051,992

Applicant(s)
Ross III, et al

Examiner
Andrew Israel

Art Unit
2878



-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136 (a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on Jan 17, 2002
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11; 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-24 is/are pending in the application.
- 4a) Of the above, claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-24 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claims _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are objected to by the Examiner.
- 11) ☐ The proposed drawing correction filed on _____ is: a) ☐ approved b) ☐ disapproved.
- 12) ☐ The oath or declaration is objected to by the Examiner.

Priority under 35 U.S.C. § 119

- 13) ☐ Acknowledgement is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d).
- a) ☐ All b) ☐ Some* c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
 - ☐ Certified copies of the priority documents have been received in Application No. _____.
 - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- *See the attached detailed Office action for a list of the certified copies not received.
- 14) ☐ Acknowledgement is made of a claim for domestic priority under 35 U.S.C. § 119(e).

Attachment(s)

- 15) ☒ Notice of References Cited (PTO-892)
- 16) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 17) ☒ Information Disclosure Statement(s) (PTO-1449) Paper No(s) 3
- 18) ☐ Interview Summary (PTO-413) Paper No(s) _____
- 19) ☐ Notice of Informal Patent Application (PTO-152)
- 20) ☐ Other: _____

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DETAILED ACTION

Information Disclosure Statement

1. The information disclosure statement filed January 29, 2002 fails to comply with 37 CFR 1.98(a)(2), which requires a legible copy of each U.S. and foreign patent; each publication or that portion which caused it to be listed; and all other information or that portion which caused it to be listed. It has been placed in the application file, but the information referred to therein has not been considered.

Claim Rejections - 35 USC § 102

2. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless --

(e) the invention was described in a patent granted on an application for patent by another filed in the United States before the invention thereof by the applicant for patent, or on an international application by another who has fulfilled the requirements of paragraphs (1), (2), and (4) of section 371(c) of this title before the invention thereof by the applicant for patent.

3. Claims 1-3, 6, 8, 12-16, 18-21, 23, and 24 are rejected under 35 U.S.C. 102(e) as being anticipated by Duggan et al (U.S. Patent # 6,124,594). Regarding independent claims 1, 20, and 21, and dependent claims 2, 3, 6, 8, 16, 23, and 24, Duggan discloses in Figures 1-2, and column 1, line 49 through column 2, line 31, an apparatus for detecting the presence of an ophthalmic product in a container, comprising: source 12 of electromagnetic energy (infrared energy) located relative to said container 2 (said container comprises a reflective metallic surface (or foil) 4); a detector 13 disposed relative to the container 2 and the source 12 to detect electromagnetic

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energy from the source which passes through or is reflected by said product (contact lens) 3; and a processor (or controller with lookup table for FTIR data) 15 for determining the presence of the product 3 in the container responsive to fluorescence or reflection.

Regarding dependent claims 12 and 13, Duggan further discloses in column 2, lines 8-30, said apparatus comprises a media which absorbs or reflects electromagnetic energy in a specified range and said media absorbs or reflects differently than said lens 3.

Regarding claims 14, 18, and 19, Duggan further discloses in column 2, line 62 through column 3, line 9, wherein said apparatus can comprise a plurality of sources and a plurality of detectors.

Regarding claims 15 and 16, Duggan discloses in column 2, lines 1-30, wherein said detection system comprises and FTIR system which inherently comprise spectrometer and calorimeter-type detectors.

Claim Rejections - 35 USC § 103

4. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

This application currently names joint inventors. In considering patentability of the claims under 35 U.S.C. 103(a), the examiner presumes that the subject matter of the various claims was

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commonly owned at the time any inventions covered therein were made absent any evidence to the contrary. Applicant is advised of the obligation under 37 CFR 1.56 to point out the inventor and invention dates of each claim that was not commonly owned at the time a later invention was made in order for the examiner to consider the applicability of 35 U.S.C. 103(c) and potential 35 U.S.C. 102(f) or (g) prior art under 35 U.S.C. 103(a).

5. Claims 4, 5, 7, 10, 17, and 22 are rejected under 35 U.S.C. 103(a) as being unpatentable over Duggan et al (U.S. Patent # 6,124,594) in view of Collins et al (U.S. Patent # 5,633,504). Duggan does not disclose said source providing ultraviolet light or a filter. Collins discloses in column 2, lines 44-62 and column 4, lines 15-30, an apparatus for detecting the presence of an ophthalmic product comprising: source which emits ultraviolet light and wherein said lens absorbs in the UV and wherein said source can also emit visible light for any particular measurement being made. Collins also discloses said system comprising a filter. It would have been obvious to one of ordinary skill in the art at the time of the invention to modify the apparatus of Duggan such that said energy source comprised ultraviolet light emission and filters could be used in order to alter the form of fluorescence that is being measured for a particular product as disclosed by Collins in column 4, lines 15-30.

6. Claims 9 and 11 are rejected under 35 U.S.C. 103(a) as being unpatentable over Duggan et al (U.S. Patent # 6,124,594). Regarding claims 9 and 11, Duggan does not specifically disclose said detector comprising neural networks or said lens being a hygroscopic lens. However, it would have been obvious to one of ordinary skill in the art at the time of the invention to select a

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detector which comprised neural networks as a matter of design choice in the material characterization art and to use a hygroscopic lens for investigation in view of column 1, lines 10-20 where hydrogel lenses are used for said product of examination.

Conclusion

7. The prior art made of record and not relied upon is considered pertinent to applicant's disclosure. Ross, III et al (U.S. Patent # 6,246,062) represents the parent application in this case.

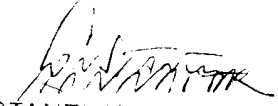
Any inquiry concerning this communication or earlier communications from the examiner should be directed to Andrew Israel whose telephone number is (703) 305-0382. The examiner can normally be reached on Monday-Friday from 8:30am to 6:00pm.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Robyn Ham, can be reached on (703) 308-4090. The fax phone number for the organization where this application or proceeding is assigned is (703) 308-7721.

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is (703) 308-0956.

AI

AI
April 8, 2002


CONSTANTINE HANNAHER
PRIMARY EXAMINER
GROUP ART UNIT 2878